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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,505	08/28/2001	Patrick H. Kilawee	E14.2-9861	6840

490 7590 01/27/2005

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/941,505

Applicant(s)

KILAWEE ET AL.

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9-11, 14-16 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 6-8, 12, 13 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 120301.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Objections***

1. Claims 2-4, 6, and 10-14 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Specifically, claims 2-4 and 11 limit the gas generated by the composition of claim 1 or the composition itself. However, the composition in claim 1 has not been positively recited and thus, is not required by the claim. Therefore, any attempts to further limit the composition or the gas produced thereby are improper.

As to claims 6, 10, and 12-14, the container of claim 1 has not been positively recited so attempts to further limit the container are improper.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 15, “the refrigeration unit” lacks positive antecedent basis as no such element has been recited in claim 1.

In claim 16, both “sachet holder” and “said refrigeration unit” lack positive antecedent basis for the reason above.

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In claim 17, both "said drawer" and "the sachet" lack positive antecedent basis for the reason above.

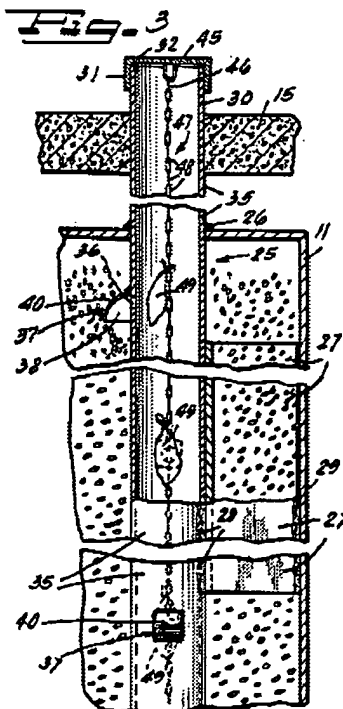
### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 11, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Dickson (U.S. Patent No. 4,059,048).

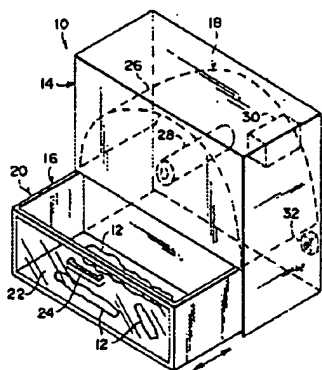


At the outset it is noted that the phrase "to permit placement...to water or water vapor" is considered to be an intended use of the access port and does not provide positive antecedent basis for further limitations on the container, composition, or gas.

Dickson teaches a unit 10 (silo) having an access port 30 openable from the exterior of the unit and a holder 47 for sachets 49, wherein the holder 47 retains the sachets 49 within the unit at a location exposed to the ambient air within the interior. The sachets 49 each contain a solid which generates a gas upon exposure to moisture.

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6. Claims 1, 5, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyler et al (U.S. Patent No. 5,225,172).



Meyler et al teaches a unit 10 comprising an enclosed space and having an access drawer 20 for holding items therein at a location exposed to the ambient air within the interior of the unit. The unit 10 of Meyler et al is disclosed to be used for "storing small articles." Webster's II New Riverside University Dictionary defines "closet" as a "small room, cabinet, or recess for storage." Given this teaching, the unit of Meyler

et al meets the broadest, reasonable interpretation of the term "closet."

7. Claims 1, 5, 16, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Comeau, II (U.S. Patent No. 5,901,564).

Comeau, II teaches a unit 119 (refrigerator) including an access drawer 118 accessible from the exterior of the unit. See Figure 3.

### *Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson.

Although Dickson does not specifically teach that the sachets 49 hold from about 50 to about 500 g of the composition, it is deemed obvious to provide an amount suitable to achieve fumigation of the unit.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Comeau, II.

The refrigerator drawer 118 of Comeau, II is located on the front, bottom portion of the unit 119. However, moving the drawer to the top of the unit is not deemed to be a patentably distinguishing limitation, as doing such would not affect the operation of the device and would be a location that would appeal to some users.

***Allowable Subject Matter***

13. Claims 6-8, 12, 13, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter: With respect to claims 6-8, the prior art of record fails to teach or suggest an indicator device activated upon each placement or replacement of a container on the holder. As to claims 12 and 13, there is no teaching or motivation in the prior art to construct the sachet of Dickson of a microporous nonwoven hydrophobic polymer sheet material. With respect to claim 17, the prior art of record fails to teach or suggest a perforated bottom in the drawers of either Comeau, II or Meyler et al..

***Conclusion***

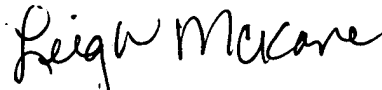
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hahn (U.S. Patent No. 4,437,575) teaches a deodorizer for the interior of a trash receptacle. Both DE 2155815 and DE 2903436 teach a sterilizer with a drawer containing a sterilant.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (7:15 am-4:45 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1275. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**

elm  
26 January 2005